



**CITY OF MARLBOROUGH
OFFICE OF CITY CLERK
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DECEMBER 5, 2016

Regular meeting of the City Council held on Monday, DECEMBER 5, 2016 at 8:00 PM in City Council Chambers, City Hall. City Councilors Present: Clancy, Juairé, Oram, Ossing, Robey, Delano, Doucette, Elder, Tunnera, Irish and Landers. Meeting adjourned at 9:20 PM.

ORDERED: That the Minutes of the City Council meeting November 28, 2016, **FILE**; adopted.

ORDERED: That the PUBLIC HEARING On the Application for Special Permit from Attorney Cipriano, on behalf of Tigercat Properties LLC, to construct a multifamily dwelling at 478 Lincoln St., Order No. 16-1006735, all were heard who wish to be heard, hearing recessed at 8:20 PM.

Councilors Present: Clancy, Delano, Doucette, Elder, Tunnera, Irish, Landers, Juairé, Oram, Ossing & Robey.

ORDERED: That the **JOINT TAX CLASSIFICATION PUBLIC HEARING** with the Board of Assessors on Monday, DECEMBER 05, 2016 at 8:00 p.m. in Council Chambers, 2nd Floor, City Hall, 140 Main Street, Marlborough, MA to determine the percentage of the local tax levy to be borne by each class of property for Fiscal Year 2017. Massachusetts General Laws Chapter 40, Section 56 sets forth the procedures and responsibilities under the law, all were heard who wish to be heard, hearing recessed at 8:50 p.m.

Councilors Present: Clancy, Delano, Doucette, Elder, Tunnera, Irish, Landers, Juairé, Oram, Ossing & Robey.

ORDERED: That the transfer of \$39,200.00 (thirty-nine thousand, two hundred dollars) from Sales of Graves to Offset the FY2017 Tax Levy, **APPROVED**; adopted.

FROM:

Acct. # 27000-33020

\$39,200.00

Sale of Graves

TO:

To Offset 2017 Tax Levy

\$39,200.00

ORDERED: That the transfer of \$914,458.82 (nine hundred fourteen thousand, four hundred fifty-eight dollars and eighty-two cents) from Aquifer Protection to Offset the FY2017 Tax Levy, **APPROVED**; adopted.

FROM:

Acct. # 61000-31200	\$914,458.82
Aquifer Protection	

TO:

To Offset 2017 Tax Levy	\$914,458.82
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ORDERED: That the transfer of \$387,914.27 (three hundred eighty-seven thousand, nine hundred fourteen dollars and twenty-seven) from Overlay Reserve to Offset the FY2017 Tax Levy, **APPROVED**; adopted.

FROM:

Acct. # 10000-32200	\$387,914.27
Overlay Reserve	

TO:

To Offset 2017 Tax Levy	\$387,914.27
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ORDERED: That the residential factor of 0.811856 which results in a CIP shift factor of 1.40 and produces, based upon the Fiscal Year 2017 Tax Levy, a residential tax rate of \$15.32 and a commercial tax rate of \$26.41, **APPROVED**; adopted.

ORDERED: Pursuant to MGL c. 30B, § 16(e)(2), the City Council of the City of Marlborough hereby determines that advertising for the proposed purchase of one or more of four (4) parcels of land will not benefit the City's interest because of the unique qualities and location of the properties as hereinafter defined:

The parcel identified on the Assessors Map of the City of Marlborough as Map 69 Parcel 224, containing 0.289 acres or 12,588.84 S.F., more or less, located at 49 West Main Street, Marlborough, MA, and further identified in a deed recorded in the Middlesex South District Registry of Deeds at Book 31600, Page 517. The person having a beneficial interest in this parcel is Lawrence R. Nourse;

The parcel identified on the Assessors Map of the City of Marlborough as Map 69 Parcel 245 containing 0.1997 acres or 8,698.93 S.F., more or less, located at 29 Witherbee Street, Marlborough, MA, and further identified in a deed recorded in the Middlesex South District Registry of Deeds at Book 47304, Page 279. The persons having a beneficial interest in this parcel are Roy E. Hanson and Eileen Maguire;

The parcel identified on the Assessors Map of the City of Marlborough as Map 69 Parcel 256 containing 0.1169 acres or 5,092.16 S.F., more or less, located at 24 Gay Street, Marlborough, MA, and further identified in a deed recorded in the Middlesex South District Registry of Deeds at Book 64881, Page 116. The persons having a beneficial interest in this parcel are Dalvan Ferreira Dos Santos and Sinara Teresinha Klipp; and

The parcel identified on the Assessors Map of the City of Marlborough as Map 69 Parcel 255 containing 0.1563 acres or 6,808.43 S.F., more or less, located at 30 Gay Street, Marlborough, MA, and further identified in a deed recorded in the Middlesex South District Registry of Deeds at Book 67384, Page 457. The person having a beneficial interest in this parcel is Alex Hernandez.

The above-identified parcels satisfy the requirements of said M.G.L. c. 30B, § 16(e)(2), because:

(i) the parcels are uniquely situated because they are located within close proximity to the existing Marlborough Public Library which does not currently have sufficient parking to meet the requirements of the Board of Library Commissioners in relation to the proposed renovation and addition project; (ii) the only way to increase the amount of parking is to purchase parcels uniquely located either adjacent to, or within close proximity of, the Marlborough Public Library; and (iii) the proposed acquisition of these parcels will increase parking for access to, and increased usage of, the Marlborough Public Library.

It is further ordered that the Mayor is authorized to negotiate and enter into individual purchase and sales agreements for each of the above-identified parcels subject to the following conditions: (i) that, in accordance with M.G.L. c. 43, § 30, the purchase price of any parcel shall not exceed 25% of the average assessed value of the parcel during the previous three years; (ii) that the City's performance under any purchase and sales agreement will be contingent upon a favorable vote of the City Council authorizing the City to acquire the parcel for the amount stated in the purchase and sales agreement; and (iii) that the City's performance under any purchase and sales agreement will be contingent upon a favorable vote of the City Council authorizing the appropriation of sufficient funds for the purchase of the parcel. As of this date, the average assessed value of each of the above-described parcels during the previous three years is as follows:

49 West Main Street (Map 69 Parcel 224) = \$303,266.66

29 Witherbee Street (Map 69 Parcel 245) = \$206,600.00

24 Gay Street (Map 69 Parcel 256) = \$223,133.33

30 Gay Street (Map 69 Parcel 255) = \$227,266.66

Refer to **FINANCE COMMITTEE**; adopted.

ORDERED: That the City of Marlborough accepts Section 53F ¾ of Chapter 44 of the Massachusetts General Laws, as amended, as follows:

Notwithstanding section 53 or any other general or special law to the contrary, a municipality that accepts this section may establish in the treasury a separate revenue account to be known as the PEG Access and Cable Related Fund, into which may be deposited funds received in connection with a franchise agreement between a cable operator and the municipality. Monies in the fund shall only be appropriated for cable-related purposes consistent with the franchise agreement, including, but not limited to: (i) support of public, educational or governmental access cable television services; (ii) monitor compliance of the cable operator with the franchise agreement; or (iii) prepare for renewal of the franchise license.

And further, that said PEG Access and Cable Related Fund shall begin operation in the fiscal year which begins on July 1, 2017.

Refer to **FINANCE COMMITTEE**.

Councilor Ossing filed a disclosure statement.

ORDERED: Be it ordained by the City Council of the City of Marlborough that Order No. 92-4412, adopted on February 24, 1992, which established the Watershed Protection and Acquisition Fund, is hereby repealed, refer to **FINANCE COMMITTEE**; adopted.

ORDERED: That the Communication from City Solicitor, Donald Rider re: Application for Special Permit from Crabtree Lake Williams, LLC, to modify Conditions #20, #36, #38 & #39, in proper legal form, Order No. 16-1006638B, **FILE & MOVE TO ITEM 18**; adopted.

ORDERED: That the Communication from the Planning Board re: Favorable Recommendation of the Proposed Zoning Ordinance within the Marlborough Village District including commentary, Order No. 16-1006667A, **FILE**; adopted.

ORDERED: That the Minutes, Board of Assessors, June 22, 2016, **FILE**; adopted.

ORDERED: That the Minutes, Zoning Board of Appeals, October 25, 2016, **FILE**; adopted.

ORDERED: That the Minutes, Assabet Valley Regional Vocational District School Committee, September 20 & October 18, 2016, **FILE**; adopted.

ORDERED: That the Minutes, Retirement Board, October 26, 2016, **FILE**; adopted.

ORDERED: That the following CLAIMS, refer to the **LEGAL DEPARTMENT**; adopted.
a. Zahi Abuhamdeh, 26 Simonds Farm Rd., Billerica, pothole or other road defect.

Reports of Committees:

Councilor Delano reported the following out of the Urban Affairs Committee:

Meeting Name: City Council Urban Affairs Committee

Date: November 29, 2016

Location: City Council Chamber, 2nd Floor, City Hall, 140 Main Street

Convened: 5:01 PM – Adjourned: 5:18 PM

Present: Chairman Delano; Urban Affairs Committee Members Councilors Elder, Tunnera and Landers; and Councilors Clancy and Doucette

Absent: Councilor Juaire

Also Present: Arthur Bergeron (Attorney, **Mirick O'Connell**); **Cynthia Panagore Griffin (Assistant City Solicitor, City of Marlborough)**

Order No. 16-1006667A - Petition on behalf of Cameron Realty Trust, 28 South Bolton Street regarding the Proposed Zoning Ordinance Amendment within the Marlborough Village District, Section 650-34 and Table of Lot Area, Yards and Heights of Structures, 650-41. The Urban Affairs Committee met with Attorney Arthur Bergeron, representative of Cameron Realty Trust, for a discussion of a proposed zoning ordinance amendment within the Marlborough Village District by allowing a zero-foot setback by right along Main Street and the eastern side of South Bolton Street between Main Street and Granger Boulevard, and the northern side of Granger Boulevard between South Bolton Street and Main Street. Cameron Realty Trust would then have the ability to submit a project by right to the City Council under the amended zoning where City Council conducts site plan review for projects within the Marlborough Village District. Chairman Delano also noted a scrivener's error in footnote three of Section 650-41, Table of Lot Area, Yards and Height of Structures which did not affect the proposed zoning amendment and was corrected for the record. The Urban Affairs Committee will request a suspension of the rules on December 5, 2016 to forward the zoning amendment to the City Solicitor to be placed in proper legal form (for the December 19, 2016 agenda) for a final vote. **Motion made by Councilor Elder, seconded by Chair, to approve the zoning amendment, as amended. The motion carried 4-0 (Councilor Juaire absent).**

Motion made by Councilor Elder, seconded by Chair, to adjourn. The motion carried 4-0 (Councilor Juaire absent.) The meeting adjourned at 5:18 PM.

Meeting Name: City Council Urban Affairs Committee

Date: December 1, 2016

Location: City Council Chamber, 2nd Floor, City Hall, 140 Main Street

Convened: 5:00 PM – Adjourned: 6:18 PM

Present: Chairman Delano; Urban Affairs Committee Members Councilors Elder, Juaire, and Landers; and Councilors Clancy, Doucette, Ossing and Robey

Absent: Councilor Tunnera

Also Present: Priscilla Ryder (Conservation Officer, City of Marlborough); Robert Walker (Principal, Walker Realty); **Cynthia Panagore Griffin; (Assistant City Solicitor, City of Marlborough)**

Reports of Committees Cont'd:

Order No. 16-1006635 - Application for Special Permit from Ryan Development LLC on behalf of Apex WR 1031 LLC and Walker Realty LLC for Proposed Car Wash, specifically to allow for a car wash in Zone B of Water Supply Protection District, 22 Apex Drive. The Urban Affairs Committee met with Robert Walker of Walker Realty for a discussion of a proposed car wash located at 22 Apex Drive within Zone B of the Water Supply Protection District. Conservation Officer Priscilla Ryder confirmed that the applicant has incorporated the conditions that she and City Engineer DiPersio recommended. The applicant was not required to meet with the Conservation Commission because the car wash is outside the one-hundred-foot buffer zone. The project was reviewed by the Site Plan Review Committee because of its location within the Water Supply Protection District. Mr. Walker had no objection to the revised conditions in the Special Permit. Two changes were made to the conditions, the first being "11. Water Use – Well, b." shall include City Engineer as in receipt of the well report; and the second change occurred in "11. Water Use – Well, d." where a typographical error of "works" was changed to "employees" with additional language for clarity. **Motion made by Councilor Elder, seconded by Chair, to approve as amended. The motion carried 3-1 (Juaire opposed; Tunnera absent).**

Order No. 16-1006634 - Application for Special Permit from Ryan Development LLC on behalf of Apex WR 1031 LLC and Walker Realty LLC for Proposed Car Wash, specifically to allow for the use of a car wash at Apex Center in the Hospitality and Recreation Mixed Use Overlay District, 22 Apex Drive. The Urban Affairs Committee met with Robert Walker of Walker Realty for a discussion of a proposed car wash located at 22 Apex Drive within the Hospitality and Recreation Mixed Use Overlay District. The primary discussion centered upon the hours of operation for the car wash as several

Councilors could not support this application with twenty-four-hour operation. The committee agreed to support the special permit application with recommended hours of operation from 6:00 AM to 12:00 Midnight, seven days per week, with the provision that the applicant, notwithstanding these hours of operation, may request to extend the hours of operation after the passage of one year after the issuance of the final occupancy permit for the operation of the car wash. (Councilor Landers was opposed to the restriction.) The Site Plan Review Committee Memorandum, dated October 25, 2016, listed the reason for the Carwash Equipment Monitoring Report as "The purpose of said report shall be to demonstrate that the nature of the effluent discharged to the Marlborough sewer system is acceptable." The Committee recommended that this language be added to condition seven (7) of the applicant's draft decision for clarity. **Motion made by Councilor Elder, seconded by Chair, to approve as amended. The motion carried 4-0 (Tunnera absent).**

Motion made by Councilor Elder, seconded by Chair, to adjourn. The motion carried 4-0 (Tunnera absent). The meeting adjourned at 6:18 PM.

Suspension of the Rules requested – granted

ORDERED: That the Petition from Attorney Bergeron, on behalf of Cameron Realty Trust, 28 South Bolton St. re: Proposed Zoning Ordinance Amendment within the Marlborough Village District, Section 650-34 and Table of Lot Area, Yards and Heights of Structures, 650-41, Order No. 16-1006667B, refer to **CITY SOLICITOR’S OFFICE TO BE PLACED IN PROPER LEGAL FORM TO BE PLACED ON THE DECEMBER 19, 2016 CITY COUNCIL MEETING;** adopted.

ORDERED: That the DPW transfer request in the amount of \$24,626.56 which moves funds from Reserve for Salaries to Sick Leave Buyback account to fund the sick leave buy back for a retiree in DPW, **APPROVED;** adopted.

CITY OF MARLBOROUGH BUDGET TRANSFERS --										
DEPT:		Comptroller				FISCAL YEAR:		2017		
FROM ACCOUNT:					TO ACCOUNT:					
Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance	
\$671,172.25	\$24,626.56	11990006	57820	Reserve for Salaries	\$24,626.56	14001303	51920	Sick Leave Buy Back	\$28,893.42	
Reason:		Recalculate amounts for contract obligations			Reason:		Obligation for retirement from DPW			
	\$24,626.56	Total			\$24,626.56	Total				

ORDERED: That the Stabilization transfer request in the amount of \$337,500.00 which moves funds from Undesignated to a new Stabilization account, Future Growth Stabilization Fund, to fund investment in projects which will increase property values and attract economic development, subject to a sunset clause that states the Future Growth Stabilization Account funds will be transferred to the Undesignated Stabilization account if not utilized by June 30, 2018, **APPROVED;** adopted.

CITY OF MARLBOROUGH BUDGET TRANSFERS --										
DEPT:		Mayor				FISCAL YEAR:		2017		
FROM ACCOUNT:					TO ACCOUNT:					
Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance	
\$12,176,290.00	\$337,500.00	10000	35900	Undesignated Fund	\$337,500.00	83600	32727	Stabilization-Revenue Growth	\$0.00	
Reason:					First mitigation payment from the Preserves @ Ames Brookview Village for the City Revenue Growth Enhancement Fund					
	\$337,500.00	Total			\$337,500.00	Total				

ORDERED: That the Downtown Stabilization transfer request in the amount of \$150,000.00 which moves funds from Undesignated to Downtown Stabilization account by which the amount transferred is from mitigation payments related to the Crabtree Project and intended to be used for downtown economic development, **APPROVED**; adopted.

CITY OF MARLBOROUGH											
BUDGET TRANSFERS --											
DEPT:		Mayor					FISCAL YEAR:		2017		
FROM ACCOUNT:					TO ACCOUNT:						
Available										Available	
Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:		Balance	
\$12,176,290.00	\$150,000.00	10000	35900	Undesignated Fund	\$150,000.00	83600	32700	Stabilization-Downtown		\$650,000.00	
Reason:						Final mitigation payment from Crabtree Lake Williams to be used for downtown economic development.					
	\$150,000.00	Total			\$150,000.00	Total					

Councilor Elder opposed.

ORDERED:

**DECISION ON AN AMENDMENT
TO AN AMENDED SPECIAL PERMIT**

CITY COUNCIL ORDER NO. 16-1006683C

X16-1006636B

X08/09-1002051E

Application of:
Crabtree Lake Williams, LLC
Locus:
Lakeside Avenue, Marlborough, MA
MBLU 67-45, 68-30A

FINDINGS OF FACT AND CONDITIONS

The City Council of the City of Marlborough hereby GRANTS the application of Crabtree Lake Williams, LLC, a Massachusetts limited liability company having a mailing address of 50 Deer Run, Ayer, Massachusetts 01432 (the "Applicant"), to amend an existing amended special permit, as provided in this Decision and subject to the following Findings of Fact and Conditions.

PROCEDURAL FINDINGS OF FACT

1. Applicant is the owner of certain real estate located on Lakeside Avenue, Marlborough, MA, as shown on City of Marlborough Assessors Maps Map 67, Parcel 45 and Map 68, Parcel 30A (the "Site").

2. On June 18, 2009, the City Council of the City of Marlborough voted to grant a special permit concerning the Site, as further described in a document recorded at the Middlesex South District Registry of Deeds in Book 53183, Page 1 (the “Original Special Permit”).

3. On September 26, 2016, the City Council of the City of Marlborough voted to grant an amendment to the Original Special Permit, as further described in a document recorded at the Middlesex South District Registry of Deeds in Book 68276, Page 423 (the “First Amended Special Permit”).

4. On September 22, 2016, the Applicant, by and through its counsel, filed with the City Clerk of the City of Marlborough an application to modify Conditions #20, #22, #23, #36, #38 and #39 of the Original Special Permit, as amended by the First Amended Special Permit, in order to accommodate changes to the design and configuration of the emergency access road and perimeter fencing in the vicinity of Bond Street, under the provisions of M.G.L. c. 40A, § 9 and the Marlborough Zoning Ordinance, Article VI, § 650-59.C(20) (the “Application”).

5. In connection with the Application, Applicant filed a Summary Impact Statement, certified list of abutters, filing fee and copies of the existing site plan for the Site.

6. The existing site plan was certified by the Planning Director of the City of Marlborough, acting by and through the Building Commissioner, as having complied with the Rules and Regulations promulgated by the City Council for the issuance of a Special Permit or an amendment thereof.

7. Pursuant to the Rules and Regulations of the City Council and applicable statutes of the Commonwealth of Massachusetts, the City Council established a date for a public hearing on the Application, and the City Clerk caused to be advertised the public hearing’s date in the MetroWest Daily News and sent notice of said hearing to abutters entitled to notice under law.

8. On Monday, October 17, 2016, the City Council held a public hearing concerning the Application. The hearing was opened and closed on that date.

9. The Applicant, through its representatives, presented testimony at the public hearing detailing the project, describing its impact upon municipal services, the neighborhood, and traffic.

10. With respect to the First Amended Special Permit, the Applicant expressly acknowledges that the phased-occupancy of the Site requires prior approval by the City of Marlborough Department of Public Works’ Water/Sewer Division of all service connections, construction of sidewalks to at least binder grade at the subject building, and the submission of interim as-built plans.

11. The Procedural Findings of Fact specified above supplement those made in the Original Special Permit and the First Amended Special Permit, which are expressly incorporated herein by reference.

BASED UPON THE ABOVE, THE CITY COUNCIL MAKES THE FOLLOWING FINDINGS OF FACT AND TAKES THE FOLLOWING ACTIONS:

A. The City Council finds that Applicant has complied with all the Rules and Regulations promulgated by the Marlborough City Council as they pertain to the Application.

B. The City Council finds that the proposed use of the Site is an appropriate use and in harmony with the general purpose and intent of the Zoning Ordinance of the City of Marlborough when subject to the appropriate terms and conditions as provided herein. The City Council makes these findings subject to the completion and adherence by the Applicant, its successors and/or assigns to the conditions more fully set forth herein.

C. The City Council, pursuant to its authority under M.G.L. c. 40A, § 9 and Chapter 650 of the Marlborough Zoning Ordinance, GRANTS the Applicant an amendment to modify Conditions #20, #36, # 38 and #39 of the Original Special Permit, as amended by the First Amended Special Permit (the "Second Amended Special Permit"), in order to accommodate changes to the design and configuration of the emergency access road and perimeter fencing in the vicinity of Bond Street, as follows:

1. By deleting Condition #20 in its entirety and inserting in place thereof the following:

20. Snow Storage on Emergency Access Road. There will be no storage of snow on the emergency access road east of the gate and fencing as shown on the Site Plan, abutting the Bond Street neighbors. The Applicant, its affiliates, successors and/or assigns shall clear snow from the emergency access road, as required by the Fire Department, into the Project Site away from the abutting Bond Street neighbors, and store and stockpile in designated snow storage areas as delineated on the Site Plan page SP 7 "Snow Storage Plan". No snow may be brought onto the Site from off site. In addition, the Applicant, its affiliates, successors and/or assigns shall make reasonable efforts to ensure that snow is removed from the emergency access road in such a way that does not disturb the abutting Bond Street neighbors.

2. By deleting Condition #36 in its entirety and inserting in place thereof the following:

36. Construction of Emergency Access Road. As shown on the plan entitled "Supplemental Instruction for Site Plan of Land in Marlborough Massachusetts Entitled Overlook at Lake Williams" dated November 16, 2016 and prepared by S.J. Mullaney Engineering, Inc. (the "Supplemental Plan"), which was submitted to the City Council and the City Council's Urban Affairs Committee to supplement the existing site plan for the Site, the entire emergency access road shall be constructed using grass covered porous pavement materials. The emergency access road shall have a vertical clearance of sixteen feet (16'). Applicant, its affiliates, successors and/or assigns shall erect a sign at or near the western terminus of the emergency access road warning that parking which would block and/or impede emergency access from that road to the Project Site is strictly prohibited.

3. By deleting Condition #38 in its entirety and inserting in place thereof the following:

38. Emergency Access Road Gate. The emergency access road gate shall be maintained so as to operate freely by one person, and shall be provided and maintained with an opening and locking system approved by the Fire Department. The emergency access road gate shall be a six (6') foot high chain link fence with white vinyl slats consistent in design with the proposed stockade fence along the Bond Street side of the Project as noted herein. An approved fire annunciator panel shall be located on the main entrance roadway into the Project, with details of its exact location and installation requirements to be determined during the Site Plan Review and fire alarm permitting process.

4. By deleting Condition #39 in its entirety and inserting in place thereof the following:

39. Vegetation on Emergency Access Road. The emergency access road shall be maintained as a grass lawn accessible by emergency vehicles by means of porous pavement materials as shown on the Supplemental Plan.

All other conditions of the Original Special Permit and the First Amended Special Permit shall continue in full force and effect, and are expressly incorporated herein by reference.

In accordance with the provisions of M.G.L. c. 40A, § 11, Applicant, its successors and/or assigns at its expense shall record this Second Amended Special Permit in the Middlesex South Registry of Deeds after the City Clerk has certified that the twenty-day period for appealing this Second Amended Special Permit has elapsed with no appeal having been filed, and further shall provide to the Building Commissioner's office and the City Solicitor's office a copy of the recorded Amended Special Permit before the issuance of any Occupancy Permit, permanent or otherwise, regarding the Site.

Yea: 11 – Nay: 0

Yea: Clancy, Delano, Doucette, Elder, Tunnera, Irish, Landers, Juairé, Oram, Ossing, & Robey

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 9:20 PM.